

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EXXONMOBIL OIL CORPORATION,
A New York Corporation

Plaintiff,

v.

D CONSTRUCTION MANAGEMENT
COMPANY, INC., an Illinois Corporation, and
PT FERRO CONSTRUCTION COMPANY,
INC., An Illinois Corporation, and
TRANSYSTEMS CORPORATION, a
Missouri Corporation, and CONSOER
TOWNSEND ENVIRODYNE ENGINEERS,
INC., a Delaware Corporation

Defendants.

Case No. 08 CV 3064

Judge Norgle

Magistrate Judge Schenkier

CROSS-CLAIM OF CONSOER TOWNSEND ENVIRODYNE ENGINEERS, INC.

Consoer Townsend Envirodyne Engineers, Inc., by and through its attorneys, Seyfarth Shaw LLP, and for its cross-claims against the defendants D Construction Management Company, Inc., PT Ferro Construction Company, Inc., and Transystems Corporation, states as follows:

COUNT I
(Contribution)

1. On information and belief, ExxonMobil Oil Corporation ("EMOC"), is a New York Corporation with its principal place of business in Houston, Texas, and is a duly registered foreign corporation in the State of Illinois engaged in the petrochemical, petroleum and related industries.

2. On information and belief, D Construction Management Company, Inc. ("D Construction"), is an Illinois Corporation with its principal place of business in Coal City, Illinois, and is engaged in providing general contracting services.

3. On information and belief, PT Ferro Construction Company, Inc. ("PT Ferro"), is an Illinois Corporation with its principal place of business in Joliet, Illinois, and is engaged in providing excavation and road construction services.

4. On information and belief, Transystems Corporation ("Transystems"), is a Missouri Corporation with its principal place of business located in Kansas City, Missouri, and is engaged in providing engineering services related to the planning, design and construction of commercial transportation and intermodal facilities and projects.

5. Consoer Townsend Envirodyne Engineers, Inc. ("CTE"), is a Delaware Corporation with its principal place of business located in Chicago, Illinois, and is engaged in providing engineering services related to construction observation.

6. On information and belief, EMOC owns and operates a refinery located in Channahon, Will County, Illinois. The Refinery, south of the intersection of I-55 and I-80, borders I-55 and is bisected by Arsenal Road, an east-west thoroughfare.

7. On information and belief, the County of Will entered into a written agreement with Transystems to design a roadway reconstruction project for the replacement and widening of Arsenal Road (the "Arsenal Road Project").

8. On information and belief, the County of Will entered into a written agreement with D Construction to perform general contracting services and implement the design for the Arsenal Road Project.

9. On information and belief, in order to perform its obligations under its written agreement with the County of Will, D Construction entered into a written agreement with PT Ferro to perform various construction activities, including excavation services.

10. The County of Will executed a contract with CTE, dated March 16, 2006, in which CTE agreed to observe the work on the Arsenal Road Project, maintain a daily record of the contractor's activities and submit various documents to the County of Will.

10. On May 28, 2008, EMOC filed its Complaint naming D Construction, PT Ferro, Transystems and CTE as defendants for damage to its property.

11. In its Complaint, EMOC alleges that on or about May 24, 2007, during construction on the Arsenal Road Project, PT Ferro damaged two sets of electrical conduit lines belonging to EMOC that it encountered underneath Arsenal Road. EMOC seeks reimbursement for the alleged damages it suffered from each of the defendants, asserting negligence claims against each of them (Counts II through V), as well as asserting a claim for trespass against PT Ferro (Count I).

12. On August 4, 2008, CTE filed the Answer and Affirmative Defenses of Consoer Townsend Envirodyne Engineers, Inc. to the Complaint of ExxonMobil Oil Corporation (the "Answer") denying any and all liability against it as alleged in EMOC's Complaint and files this cross-claim for contribution in the alternative, without waiving any of its responses, denials or any other pleadings on file in the instant litigation.

13. Pleading in the alternative, and without prejudice to the assertions and denials in its Answer, in the event that CTE is found liable to EMOC, it would be as a direct and proximate result of the negligent acts and/or omissions of defendants D Construction, PT Ferro and/or Transystems as alleged in EMOC's Complaint.

14. At the time of the occurrence alleged in EMOC's Complaint, there existed, and still exists, a right to contribution between tortfeasors pursuant to the Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

15. If CTE is found to be liable to EMOC in this matter, then CTE is entitled to contribution from each of defendants D Construction, PT Ferro and Transystems in the amount that constitutes the contributory share of responsibility on the part of each of them.

WHEREFORE, Consoer Townsend Envirodyne Engineers, Inc. prays that if judgment is entered against it and in favor of ExxonMobil Oil Corporation, that judgment be entered in favor of Consoer Townsend Envirodyne Engineers, Inc. and against defendants D Construction Management Company, Inc., PT Ferro Construction Company, Inc., and Transystems Corporation in an amount which represents the relative degree of fault attributable to them pursuant to 740 ILCS 100/0.01, *et seq.* and that it be awarded such other relief as the Court may deem proper.

COUNT II
(Indemnification - D Construction)

16. CTE hereby incorporates and re-alleges by reference each and every allegation contained in paragraphs 1 through 11 above as though fully stated and set forth here.

17. On August 4, 2008, CTE filed the Answer and Affirmative Defenses of Consoer Townsend Envirodyne Engineers, Inc. to the Complaint of ExxonMobil Oil Corporation (the "Answer") denying any and all liability against it as alleged in EMOC's Complaint.

18. The damages alleged by EMOC were the direct and proximate result of the construction activities and obligations of D Construction and one or more of its subcontractors.

19. Pursuant to Article 107.26 of IDOT's Standard Specifications for Road and Bridge Construction, D Construction is "responsible for any and all injuries to persons or damages to property due to the activities of [D Construction and its] subcontractors, suppliers, agents, or employees arising out of or resulting from performance of the contract, or any activity in connection therewith."

20. Pursuant to Article 107.26 of IDOT's Standard Specifications for Road and Bridge Construction, D Construction also is required to indemnify and hold harmless the County of Will and its agents from any and all claims and lawsuits (including reasonable attorneys' fees) arising from or connected with its work on the Arsenal Road Project.

21. To the extent CTE is determined to be an agent of the County of Will, CTE is entitled to indemnification from D Construction for any and all costs it incurs in this lawsuit.

WHEREFORE, Consoer Townsend Envirodyne Engineers, Inc. prays that judgment be entered in its favor and against D Construction Management Company, Inc. in an amount to be determined for any and all costs, including reasonable attorneys' fees, that it may incur related to this lawsuit and that it be awarded such other relief as the Court may deem proper.

Respectfully submitted,

/s/ Scott J. Smith

Scott J. Smith (# 6238132)

Seyfarth Shaw LLP

131 S. Dearborn St.

Suite 2400

Chicago, IL 60603-5803

Telephone: (312) 460-5000

Facsimile: (312) 460-7000

Attorneys for Defendant Consoer Townsend
Envirodyne Engineers, Inc.